

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

15-P-994

DEANNA SHINE

vs.

JUDITH KOLB MORRIS & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In a divorce proceeding in which the plaintiff, Deanna Shine, was a party, a Probate and Family Court judge appointed the defendant, Judith Kolb Morris, a guardian ad litem (GAL) "to investigate . . . the . . . issues of visitation and custody and to evaluate the minor children and the parties in the context of these issues." Under the appointment order, Morris's fees were to be split by Shine and her former husband "in the first instance, without prejudice to a reallocation of [the parties'] respective responsibilities for her fees by the Court after hearing on the merits."

After a dispute ensued over Shine's paying her share of the GAL fees, Morris brought a series of contempt actions that

¹ Psychiatric & Psychological Associates.

ultimately resulted in rulings in her favor.² Shine then brought the current action in Superior Court alleging various claims ranging from breach of contract to fraud. On Morris's motion to dismiss, a Superior Court judge ruled against Shine and judgment entered dismissing the complaint.³ In a thoughtful memorandum, the judge rested on a GAL's absolute immunity from suit. However, he noted that Shine's amended complaint also may fail as a matter of law for independent reasons: *res judicata* and lack of standing. We affirm.

As a general matter, any concerns that Shine had over the GAL's conduct and fees had to be raised in the court that appointed the GAL, in this case the Probate and Family Court. Although it is true that the Probate and Family Court would not have had jurisdiction over some of the claims that Shine sought to bring (e.g., alleged breaches of G. L. c. 93A), Shine has made no compelling arguments that the GAL would not enjoy

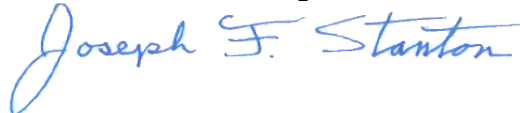
² Pursuant to one contempt ruling, Shine was jailed for twenty days.

³ The judgment dismissing the complaint included any claims against Morris's company, defendant Psychiatric & Psychological Associates (PPA). The judge ruled that Shine's amended complaint mentioned PPA only in passing and failed to state any theory under which PPA would be liable (a conclusion not subject to challenge since neither the original complaint nor the amended complaint was included in the record appendix). In any event, since Morris is not liable, PPA could not derivatively be liable.

absolute immunity from such liability. See Sarkisian v. Benjamin, 62 Mass. App. Ct. 741, 745 (2005).⁴

Judgment affirmed.

By the Court (Grainger,
Meade & Milkey, JJ.⁵),



Clerk

Entered: March 18, 2016.

⁴ We recognize that the GAL had Shine sign a "retainer and consent agreement" with her. Even were we to consider whether this fact could have affected the GAL's absolute immunity, we do not see how the agreement between Shine and the GAL would have been enforceable as a contract. See Boston Professional Hockey Assn., Inc. v. Commissioner of Rev., 443 Mass. 276, 287 (2005), quoting from Sloan v. Burrows, 357 Mass. 412, 415 (1970) ("We have long held that 'performance of an existing legal duty or contractual obligation is not sufficient consideration for a new promise by the obligee'").

⁵ The panelists are listed in order of seniority.